

COUNTY COURTS:
PAYMENT OF JUDGMENTS:

County court may be compelled by
mandamus to issue warrants in payment
of judgments if money for payment of
same is available.

February 10, 1940

2-14



Mr. Ermer J. Garner, Deputy Clerk
Circuit Court of Stoddard County
Bloomfield, Missouri

Dear Sir:

This is in reply to yours of recent date where-
in you requested an official opinion from this depart-
ment based on the following statement:

"On January 12, 1940, I obtained a
judgment in this Court, against
Stoddard County, Missouri, for due
and unpaid salary, as deputy Cir-
cuit Clerk, of Stoddard County,
Missouri, salary having been earned
in year 1935, in the sum of \$249.91,
together with interest.

"I would appreciate very much hav-
ing your opinion as to whether I
would be entitled to and be able
to obtain a warrant from Stoddard
County, Missouri, in the amount of
the judgment rendered by the Cir-
cuit Court of Stoddard County, Mis-
souri, in my favor, as aforesaid.

"Please let me have your opinion
on this soon."

I note in your letter that the judgment which
you have is based on the claim for salary for the year
1935. Your request does not indicate whether or not
there was a balance carried over from the year 1939
into 1940. However, your letter indicates that the
judgment which you have was obtained on January 12, 1940,

and we are assuming, for the purpose of this opinion, that this judgment is final.

County courts are only authorized to issue warrants by virtue of the provisions of the statute and within the constitutional limits. Section 12 of Article X of the Constitution clearly shows that the framers of that article intended that the county operate on a cash basis. A legislation to that effect has also been passed. In Section 9867, R. S. Missouri 1929, it is provided as follows:

"The following named taxes shall hereafter be assessed, levied and collected in the several counties in this state, and only in the manner, and not to exceed the rates prescribed by the Constitution and laws of this state, viz.: The state tax and the tax necessary to pay the funded or bonded debt of the state, the funded or bonded debt of the county, the tax for current county expenditures, the taxes certified as necessary by cities, incorporated towns and villages, and for schools."

And in the case of State ex rel. Philpott, Collector of Revenue, v. St. Louis-San Francisco Ry. Co., 247 S. W. 182, it was held that the term "current county expenditures" means the expenditures for the year for which the taxes are levied.

Under the County Budget Act, Laws of Missouri 1933, page 340, and in Section 5 thereof, l. c. 344, the current expenditures of the county are divided into five classes. This section provides as follows:

"The court shall show the estimated expenditures for the year by classes as follows:

"Class 1: Care of paupers declared

by lawful authority to be insane
(in state hospitals).

"Class 2: Repair and upkeep or
replacement of bridges on other
than state highways and not in any
special road district. List bridges.

"Class 3: Expense of conducting circuit
court and election, not to include the
salary of any officer or employee on
a yearly salary nor deputy or assist-
ant of any kind whatever though on ir-
regular time, such shall be estimated
for under class four. Class 3 shall
include pay of jurors, witnesses if
properly paid by the county, and
other incidental court costs, pay of
judges and clerks of elections and
all other expense of elections charge-
able against the county. This esti-
mate shall not be less than last pre-
ceding even year in even years and
last preceding odd year in odd number-
ed years

"Class 4: Pay or salaries of officers
and office expense. List each office
separately and the deputy hire separate-
ly

"(County clerk shall prepare estimate
for the county court but his failure
does not excuse the court)

"Class 5: Contingent and emergency
expense, not to exceed one-fifth of
the total estimated revenue to be
received. Purposes for which the
court proposes the funds in this
class shall be used shall be shown.

"Class 6: Amount available for all
other expenses after all prior classes
have been provided for. No expense
may be incurred in this class until

all the prior classes have been provided for. No warrant may be issued for any expense in class 6 unless there is an actual cash balance in the county treasury to pay all prior classes for the entire current year and also any warrant issued on class six. No expense shall be allowed under class six if any warrant drawn will go to protest. Provided, however, if necessary to pay claims arising in prior classes warrants may be drawn on anticipated funds in class six and such warrants to pay prior class claims shall be treated as part of such prior funds. Nor may any warrant be drawn or any obligation be incurred in class six until all outstanding lawful warrants for prior years shall have been paid. The court shall show on the budget estimate the purpose for which any funds anticipated as available in this class shall be used."

Class 6 of the foregoing section indicates that outstanding warrants may be paid out of that class. Of course, if a person has a judgment on an outstanding warrant, we think it would take the same classification. But the first five classes of Section 5, supra, include the expenses which are necessary to operate the county for each particular year and those are the current county expenditures which are taken into consideration when the county levy is made under said Section 9867. If the county has outstanding obligations, which would not be classed as current county expenditures, then we think that the lawmakers, under Section 9868, R. S. Missouri 1929, made provision for the payment of such claims on judgments. This section provides as follows:

"No other tax for any purpose shall be assessed, levied or collected, except under the following limitations and conditions, viz.: The

prosecuting attorney or county attorney of any county, upon the request of the county court of such county--which request shall be of record with the proceedings of said court, and such court being first satisfied that there exists a necessity for the assessment, levy and collection of other taxes than those enumerated and specified in the preceding section--shall present a petition to the circuit court of his county, or to the judge thereof in vacation, setting forth the facts and specifying the reasons why such other tax or taxes should be assessed, levied and collected; and such circuit court or judge thereof, upon being satisfied of the necessity for such other tax or taxes, and that the assessment, levy and collection thereof will not be in conflict with the Constitution and laws of this state, shall make an order directed to the county court of such county, commanding such court to have assessed, levied and collected such other tax or taxes, and shall enforce such order by mandamus or otherwise. Such order, when so granted, shall be a continuous order, and shall authorize the annual assessment, levy and collection of such other tax or taxes for the purposes in the order mentioned and specified, and until such order be modified, set aside and annulled by the circuit court or judge thereof granting the same: Provided, that no such order shall be modified, set aside or annulled, unless it shall appear to the satisfaction of such circuit court, or judge thereof, that the taxes so ordered to be assessed, levied and collected are not authorized by the Constitution and laws of this state,

or unless it shall appear to said circuit court, or judge thereof, that the necessity for such other tax or taxes, or any part thereof, no longer exists."

We think that your judgment could be taken care of by moneys derived from the levy authorized under the foregoing section provided the county court, circuit court and the prosecuting attorney see fit to make such a levy.

Section 12167, R. S. Missouri 1929, provides as follows:

"Whenever there is a balance in any county treasury in this state to the credit of any special fund, which is no longer needed for the purpose for which it was raised, the county court may, by order of record, direct that said balance be transferred to the credit of the general revenue fund of the county, or to such other fund as may, in their judgment, be in need of such balance."

Under this section, if at the end of the year a surplus should remain in any one or more of the funds listed as current county expenditure funds, the county court, for the purpose of paying a judgment, might transfer all of these funds to Class 6 and pay your judgment from that fund. Of course, the right to make such transfer would depend upon whether or not all warrants issued for current county expenditures had been paid and all outstanding warrants which pre-dated your judgment had been paid.

CONCLUSION.

From the foregoing it is the opinion of this department that the county court may, at the end of the current year, pay your judgment out of any balance

Mr. Ermer J. Garner

(7)

February 10, 1940

which remains in county revenue provided all claims against that fund have been paid, and providing all warrants or judgments pre-dating the current year and pre-dating your judgment have been paid.

We are further of the opinion that under Section 9868, R. S. Missouri 1929, that the county court, prosecuting attorney and circuit court would be authorized to make a special levy, the funds from which may be used to pay this judgment providing the judgment is valid.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

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